

FILED IN TRIPLICATE  
PATENT APPLICATION

I hereby certify that this transmittal and the documents referred to as enclosed therein are being deposited with the United States Postal Service

"Express Mail Post Office to Addressee" service under 37 CFR 1.10 via

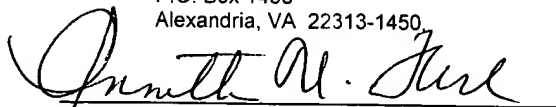
Label No. EV342337429US, on March 24, 2004, addressed to:

MAIL STOP: PCT; Office of PCT Legal Administration

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

  
Annette M. Turk, Paralegal

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Waltherus J.W. van Venrooij, et al.

Serial No. 09/308,150

Filed: May 13, 1999

For: PEPTIDE DERIVED FROM AN ANTIGEN  
RECOGNIZED BY AUTOANTIBODIES FROM PATIENTS WITH  
RHEUMATOID ARTHRITIS, ANTIBODY DIRECTED AGAINST  
SAID PEPTIDE, A COMBINATORIAL ANTIGEN, AND A METHOD  
OF DETECTING AUTO-IMMUNE ANTIBODIES

Group Art Unit 1644

Examiner: F. VanderVegt

**Mail Stop: PCT**

Commissioner for Patents

Office of PCT Legal Administration

P. O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

**RENEWED PETITION UNDER 37 C.F.R. § 1.47 (a)**

This Renewed Petition is submitted in response to the Office's Petition Decision mailed on September 24, 2003. Accompanying this Petition is the required petition for extension of time and extension fees. Authorization is provided in this Petition to charge any additional fees to Deposit Account No. 13-4213.

03/30/2004 WCLAYBR 00000004 09308150  
01 FC:1450

The subject national entry application was filed by express mail on May 13, 1999, listing Waltherus Jacobus Wilhelmus Van Venrooij, Gerardus Antonius Schellekens, Jozef Maria Hendrik Raats and Rene Michael Antonius Hoet as co-inventors, and claimed priority to International Application Serial

No. PCT/NL97/00624 filed on November 14, 1997. At the time of the U.S. national entry application, none of the signatures had been obtained. Inventor Gerardus Antonius Schellekens has refused to join in the application. Thus, Waltherus Jacobus Wilhelmus Van Venrooij, Jozef Maria Hendrik Raats and Rene Michael Antonius Hoet respectfully petition the Office to accept the filing of this application on their own, and in behalf of Gerardus Antonius Schellekens.

In accordance with 37 C.F.R. § 1.497(a) and M.P.E.P. 1002.02(b) and M.P.E.P. 409.03, the undersigned states the following:

(1) A Declaration under 37 C.F.R. § 1.63 on their own behalf, and under 37 C.F.R. § 1.64 on Gerardus Antonius Schellekens' (hereafter "Dr. Schellekens") behalf, was signed by the Rule 47(a) applicants, Waltherus Jacobus Wilhelmus Van Venrooij, Jozef Maria Hendrik Raats and Rene Michael Antonius Hoet and was filed on September 30, 1999;

(2) An initial Petition Under 37 C.F.R. § 1.47(a), asserting that Dr. Schellekens refused to join in the application, was filed on September 30, 1999. On November 3, 1999, the Office mailed a Notification of Acceptance (Form PCT/DO/EO/903), indicating that the application had 35 U.S.C. §§ 102(e) and 371 dates of September 30, 1999. Thereafter, no further action was taken on the initial Petition until issuance of a Decision on Petition Under 37 C.F.R. § 1.47(a) dated April 18, 2003, which held that "proof ... that the inventor refuses to sign or cannot be reached after diligent effort" had not been established. As appears from the Decision, Dr. Schellekens had corresponded with the Office, and had used in such correspondence a different address than that appearing in the initial Petition. Accordingly, the initial Petition was dismissed and the Notice of Acceptance vacated, with leave to file for reconsideration.

(3) A "Petition Decision Response and Renewed Petition" was filed on June 17, 2003, and a "Supplemental Petition Decision Response" was filed on July 15, 2003. As recited therein, as a result of a judicial proceeding in The Netherlands, a declaration signed by Dr. Schellekens was submitted.

(4) By "Decision on Petition Under 37 C.F.R. § 1.47(a)" dated September 24, 2003, the initial Petition was "dismissed as moot", but the declaration submitted on July 25, 2003 was rejected because the "18 U.S.C. 1001 statement is partially obscured and the declaration contains untranslated notations." Petitioners were given two months within which to file the proper response, with extensions of time available under 37 CFR 1.136(a).

(5) Petitioners attempted to contact Dr. Schellekens on numerous occasions to resolve issues between the parties. On information and belief, legal proceedings in The Netherlands are pending relating to ownership of the invention. This effort culminated with a letter being sent to Dr. Schellekens by both registered mail and courier delivery on March 9, 2004, a copy of which letter is attached as Exhibit A hereto. This letter recites, *inter alia*, the efforts by counsel for the assignee, Stichting voor de Technische Wetenschappen, to resolve issues and obtain Dr. Schellekens' signature on a valid declaration.

(6) By declaration dated March 10, 2004, attached as Exhibit B hereto, Dr. Schellekens responded to the letter of March 9, 2004. It is not known whether Dr. Schellekens submitted the declaration directly to the Office, or whether it has been matched to the file, but the declaration is addressed to the "commissioner of Patents and Trademarks." In his declaration, Dr. Schellekens recites that he is "an inventor of the invention described in the above captioned U.S. patent application 09/308,150." However, based on Dr. Schellekens belief as to the facts, Dr. Schellekens states that he "will not at this moment sign any document concerning U.S. patent application 09/308,150." While Dr. Schellekens claims that he was mislead (see the unnumbered second through seventh paragraphs), the third from the last paragraph sets out his true reason in refusing to sign the declaration, namely that he is disputing ownership of the patent application.

(7) Petitioners vigorously dispute the factual allegations by Dr. Schellekens in the unnumbered second through seventh paragraphs of Exhibit B. See, e.g., the declaration of co-inventor Waltherus Jacobus Wilhelmus Van Venrooij, which states that there was a "disturbed working relationship" with Dr. Schellekens, that he personally telephoned Dr. Schellekens on June 10, 1999 and

asked him to sign the declaration, that he had a letter containing the declaration hand delivered to Dr. Schellekens on June 11, 1999, and that the "documents were returned unsigned by mail together with a letter indicating an absolute refusal to sign." (Declaration of Van Venrooij, filed September 30, 1999) However, it is not necessary to a decision on this Renewed Petition to resolve these issues; the declaration of Dr. Schellekens (Exhibit B) clearly establishes the legally pertinent fact, which is that Dr. Schellekens refuses to sign the declaration. Further, Dr. Schellekens' own declaration further establishes the true reason for his refusal, a dispute as to ownership of the patent application.

(8) Petitioners further understand that Dr. Schellekens has contacted both Examiner Francois Pierre VenderVegt in Group Art Unit 1644 of the U.S. Patent and Trademark Office, who is presently the assigned examiner on the application, and the PCT Legal Administration Attorney Advisor, Erin M. Pender, who issued the original Decisions on Petition, indicating his refusal to execute the application papers. The correspondence of record in the Patent Office files and communications by Dr. Schellekens clearly show his intentions.

(9) The initial Petition Under 37 C.F.R. § 1.47(a), asserting that Dr. Schellekens refused to join in the application and filed on September 30, 1999, together with all declarations and papers submitted therewith, are incorporated here by reference. It is specifically noted that the Decision on Petition Under 37 C.F.R. § 1.47(a) dated April 18, 2003 established that all statutory requirements had been met, other than proof of the inventor's refusal to sign.

(9) The last known address of co-inventor Gerardus Antonius Schellekens is:

Gerardus Antonius Schellekens  
Tondeldoos 36  
5231 WB Den Bosch, The Netherlands.

#### **Action Requested**

In view of co-inventor Dr. Schellekens' refusal to execute the declaration required in order to respond to the Office's Notification mailed July 6, 1999 and the Decision on Petition Under 37 C.F.R.

§ 1.47(a) dated September 24, 2003, and as necessary to complete the subject application, Waltherus Jacobus Wilhelmus Van Venrooij, Jozef Maria Hendrik Raats and Rene Michael Antonius Hoet request that the Declaration under 37 C.F.R. § 1.63 and § 1.64 be accepted and that the subject application be considered complete as to its filing. Waltherus Jacobus Wilhelmus Van Venrooij, Jozef Maria Hendrik Raats and Rene Michael Antonius Hoet believe that they are entitled to make such application on behalf of co-inventor Schellekens.

The declaration as to inventorship that Dr. Schellekens signed was, unfortunately, a second or third generation photocopy and was apparently copied with tabs marking the place for signature and with notations to the effect of "sign here" written in Dutch. Those tabs also covered part of the required text of the form of declaration and thus the previously signed document is not sufficient to meet the requirements for an inventor declaration. Dr. Schellekens has subsequently continued to refuse to sign a declaration as to inventorship, as shown by his own declaration attached hereto as Exhibit B.

Therefore, it is requested that this Petition be granted and that the application be provided 37 C.F.R. § 1.495 status.

#### **Fee**

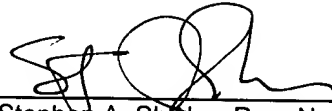
Provided with the Petition is a check for \$130 in payment of the filing fee as required under 37 C.F.R. § 1.17(i). Because this is a renewed petition, it is respectfully requested that the fee be waived. A Petition for Extension of Time is attached with the required fee of \$740. Authorization is given to charge payment of any additional fees, or credit any overpayment to Deposit Account 13-4213.

Grant of the Renewed Petition is respectfully requested.

Respectfully submitted,

Dated: March 24, 2004

By



---

Stephen A. Slusher Reg. No. 43,924  
Direct line: (505) 998-6130

Attorney for Petitioners  
PEACOCK, MYERS & ADAMS, P.C.  
Post Office Box 26927  
Albuquerque, New Mexico 87125-6927

Telephone: (505) 242-9677  
Facsimile: (505) 243-2542

[G:\AMDS\Los&Stig\VanVenrooij-inventor.Pet2.doc] 30394-1027

**By registered mail and DHL-delivery**

Dr. G.A. Schellekens  
Tondeldoos 36  
5231 WB Den Bosch

Amsterdam, 9 March 2004

our reference      US 45919-VB/mg  
your reference

Re                    US Patent application no. 09/308.150  
                         In the name of Stichting voor de Technische Wetenschappen

1/2

Dear Dr. Schellekens,

I refer to my efforts in the year 2003 to obtain your signature under the Declaration for Utility or Design Patent Application (37 CFR 1.63) in re US patent application, serial number 09/308,150 based on PCT-application PCT/NL97/00624.

Through the offices of Lovells, Miss Judith Krens, you were advised that the declaration that you eventually signed was rejected by the US Patent Office because the 18 USC 1001 statement in this declaration is partially obscured and the declaration contains translated notations in a foreign language.

By letters of February 25, 2004, and March 2, 2004, Miss Krens therefore requested you to sign the declaration again without the obscured passages and without hand-written notations. For what appear to be only vexatious reasons you denied to oblige to this repeated request.

This is to formally advise you that the declaration signed by your good selves, can be filed with the US Patent Office up to and including **March 24, 2004**. This term is not extendable. Consequently your not timely returning the signed declaration before **March 14, 2004**, to allow sufficient time to file the signed declaration with the US Patent Office may result in the application becoming abandoned. Needless to say that you will be held liable for the direct and consequential damages that my client will suffer therefrom.

**Exhibit A**

**Amsterdam:**

Weteringschans 96  
1017 XS Amsterdam  
tel: (31) 20-6236832  
fax: (31) 20-6260007

**Utrecht:**

Maliebaan 26  
3581 CP Utrecht  
tel: (31) 30-2369712  
fax: (31) 30-2369695

**Eindhoven:**

Vestdijk 9  
5611 CA Eindhoven  
tel: (31) 40-2467971  
fax: (31) 40-2431175

**Bank:** ABN-AMRO Amsterdam, account no. 46.77.62.120, IBAN: NL64ABNA0467762120, BIC: ABNANL2A

**Giro:** account no. 8321 **Chamber of Commerce:** Amsterdam 33137428 **V.A.T.:** NL 001410106B01

Het bureau heeft een beroepsaansprakelijkheidsverzekering. De aansprakelijkheid is in voorkomende gevallen beperkt tot het bedrag dat onder de beroepsaansprakelijkheidsverzekering wordt uitgekeerd.

Enclosed, I again send you the Declaration for Utility or Design Patent Application (37 CFR 1.63) together with a copy of the application PCT/NL97/00624 to which the application pertains and summon you to sign and return the declaration so that it is in my possession ultimately **March 14, 2004**.


Yours very truly,  
OCTROOIBUREAU LOS EN STIGTER B.V.



J. van Breda

Enclosures:

- Declaration for Utility or Design Patent Application
- Copy of the application PCT/NL97/00624

CC: Peacock, Myers & Adams, P.C., attn. Mr. Stephen Slusher   
Lovells, attn. Mr. J. Krens



**The United States Patent and Trademark Office**

**March 10, 2004**

**Regarding the application:**

**Applicants: Waltherus, J.W. van Venrooij et al.**

**Serial no: 09/308,150**

**Filing date: May 13, 1999**

**"Peptide derived from an antigen recognized by autoantibodies from patients with rheumatoid arthritis, antibody directed against said peptide, a combinatorial antigen, and a method of detecting auto-immune antibodies"**

**To the commissioner of Patents and Trademarks  
Washington, D.C. 20231**

**Dear Sir,**

**I, Gerardus Antonius Schellekens, declare that,**

**I am an inventor of the invention described in the above captioned U.S. patent application 09/308,150.**

**The assignee 'Stichting voor de Technische Wetenschappen' (STW) and her representatives entered a petition under 37 CFR §1.47(a) on September 30, 1999. This petition was based on a untruthful statement by one of the co-inventors. In contrary to what was stated in this declaration, documents concerning the U.S. application were not presented to me at this occasion, nor did I refuse to sign any such documents.**

**On June 16, 2003, for the first time a document (the 'declaration') was presented to me with a request to sign it. Some time later the 'assignment' document was presented to me with a request to sign. Never any effort was made by the STW or her representatives to explain to me what I was requested to sign, nor for what purpose. On July 2, 2003 I signed both documents that were legalized and the documents were forwarded to the patent attorney office that represents the STW.**

**On January 25, 2004 I was requested by a lawyer representing STW to sign the 'declaration' document again. The explanation given to me was that "the document was lost at the offices of the USPTO". I requested some form of proof that the document indeed got lost at the offices of the USPTO. I received no reaction on this request and on February 20, 2004 I contacted the patent examiner at the USPTO by phone. He could not confirm that the document indeed got lost at the offices of the USPTO. I confronted the lawyer representing STW with this on February 20, 2004. As a reaction I received on March 2, 2004 the 'decision on petition under 37 CFR 1.47(a)' by the USPTO dated September 24, 2003.**

From this USPTO decision I concluded that a second attempt was made by STW to pass a 'refusal to join' by submitting a renewed petition under 37 CFR §1.47(a) on June 17, 2003. Again, I state that I never refused to sign any document concerning the U.S. patent application.

Moreover, from the USPTO decision I concluded that the explanation that my signature was required because the 'declaration' was lost at the offices of the USPTO, as stated by the lawyer of STW on January 25, was not in agreement with the facts.

It was after signing the 'declaration' and 'assignment' documents on July 2, 2004 that I became aware of the facts stated above. I conclude now that the actions of STW and her representatives are characterized by lies, deceit and are illegitimate with respect to the petitions entered on September 30, 1999 and June 17, 2004.

I can not excuse such conduct by STW, and by signing any document I would condone their action. Therefore I can and will not at this moment, sign any document concerning U.S. patent application 09/308,150. However, if at some point in time the above mentioned problems are dealt with in a satisfactory manner, I will consider to join as an inventor in the application. In this case I will enter a request as such to the USPTO.

Moreover, a more formal reason that forces me not to join in the application at this moment exists. Application 09/308,150 claims priority of the foreign patent application NL97/00624. Under the patent law of the Netherlands only the inventors or, under certain conditions, the employer of the inventors, have the right to file for patent. STW was never my employer. My former employer at the time of the invention was 'De Nederlandse Organisatie voor Wetenschappelijk Onderzoek' (NWO). It is however doubtful that there ever was a legal assignment of the Dutch patent rights from NWO to STW. Possibly, a ruling concerning this matter is due in the course of 2004 by the Supreme Administrative Court of the Netherlands. By signing any documents as requested by STW concerning patent application 09/308,150, I would disregard a possible legal improper situation in the Netherlands. I can only sign at the moment that this legal issue in the Netherlands is clarified and there is no doubt whether STW is indeed the rightful owner.

I declare with knowledge of the documents concerned and in consideration of the above mentioned circumstances, that at this moment the situation unfortunately forces me not to join as an inventor in the application 09/308,150, and that this declaration can formally be considered as a pertinent refusal to join.

I hereby declare that all statements made herein to my knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: March 10, 2004



Gerardus Antonius Schellekens